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# Iowa Legislative Fiscal Bureau

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State Capitol  
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August 8, 1996

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## Indigent Defense Update

### ISSUE

The number and cost of indigent defense cases continue to increase. In an attempt to slow the rate of increase in the cost of legal representation for indigent persons, the State Public Defender's Office is utilizing more contract attorneys and receiving funds to hire additional public defenders and staff.

### AFFECTED AGENCIES

State Public Defender's Office  
Department of Inspections and Appeals  
Judicial Department

### CODE AUTHORITY

Sections 10A, 13B, and 815, Code of Iowa

### BACKGROUND

Indigent Defense is a State program designed to provide legal representation to low-income criminal defendants. Legal representation is provided by either a State public defender, an attorney under contract with the State Public Defender's Office, or a practicing attorney appointed by the Court.

The State Public Defender, appointed by the Governor and confirmed by the Senate, coordinates and supervises all court cases assigned to public defenders. All public defenders are State-employed attorneys working under the Department of Inspections and Appeals (DIA).

Court-appointed attorneys and contract attorneys are also compensated with State funds. Each court-appointed attorney submits a summary bill to the presiding judge stating in-court hours, out-of-court hours, hourly fee requested, and other expenses. The judge then determines the total amount of compensation. The District Court Judge authorizes all payment claims, the District Court Administrator reviews the information and prepares the proper documentation to forward to the Department of Inspections and Appeals, and payment

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is made for the amount authorized. The State Public Defender is authorized to review any claim made for payment of indigent costs believed to be excessive.

In 1993, six counties participated in a pilot project in which attorneys under contract with the State Public Defender were given priority when outside assignments were made by the Court. Contracts were awarded to bidders providing contract terms most favorable to the State, balanced with other factors relating to the provision of competent and effective service. The General Assembly passed legislation in FY 1994 to allow the State Public Defender to contract for legal services for indigent or partially indigent persons anywhere in the State.

### **CURRENT SITUATION**

The number of indigent cases is increasing because of the increase in domestic assault cases, an increase in juvenile crimes, tougher laws, and more cases with multiple defendants. The Department of Inspections and Appeals has been attempting to reduce the cost of defending indigent offenders by increasing the number of contracts with local attorneys at a rate lower than that often awarded by the Court to private attorneys and by expanding the State Public Defender's Office. The Department is also assigning public defenders to represent individuals most likely to go to trial.

The General Assembly enacted changes during the 1996 Legislative Session in the requirements for a person to be determined indigent and in the fee structure for a private attorney appointed by the Court. The changes include the definition of "partially indigent" and the amount required for these persons to contribute to the cost of their own defense.

House File 2458 (Criminal and Juvenile Justice Act) specifies that the "reasonable compensation" a private attorney is entitled to shall not be calculated based on an hourly rate that exceeds the rate a contract attorney would receive in a similar case.

Persons with incomes at or below 150% of the poverty guidelines are considered indigent and receive legal counsel at State expense. Persons with incomes above 200% are not indigent and not eligible for legal counsel at State expense. However, persons with incomes over the 200% ceiling may still receive State paid legal counsel if the Court makes a written finding of substantial hardship.

Persons defined as "partially indigent" are required to contribute to the cost of their legal defense. House File 2458 defines "partially indigent" as persons between 150% and 200% of the poverty guidelines and revised the amounts a partially indigent person is required to contribute. Persons with incomes between 150% and 185% of the poverty level are required to contribute \$200 for legal defense costs in accordance with rules adopted by the State Public Defender. Persons with incomes in excess of 185% of the poverty level who receive legal representation are required to contribute \$300.

### **BUDGET IMPACT**

From FY 1992 through FY 1995, the total number of cases involving adult indigent persons increased 32.3%, from 51,270 to 67,825 cases. Over the same time period, the cost of legal representation for adult indigent persons increased 33.4%, from \$14.7 million to \$19.6 million. Historical information on the average cost per case for the Indigent Defense Program and State Public Defender's Office is illustrated below:

	FY 1992	FY 1993	FY 1994	FY 1995
<b>Court Appointed Private Attorneys</b>				
• Total cases	16,567	17,077	15,623	16,011
• Rate of change	-16.90%	3.10%	-10.60%	4.90%
• Total expenditures	\$ 8,172,263	\$ 7,586,834	\$ 7,330,700	\$ 6,948,598
• Rate of change	-11.90%	-7.20%	-2.80%	-5.20%
• Average case cost	\$ 494	\$ 444	\$ 483	\$ 434
<b>Contract Attorney Program *</b>				
• Total contract cases	NA	924	7,630	11,051
• Rate of change	NA	NA	725.76%	44.84%
• Total expenditures	NA	\$ 238,702	\$ 2,421,035	\$ 3,920,388
• Rate of change	NA	NA	914.25%	61.93%
• Average case cost	NA	\$ 258	\$ 317	\$ 355
<b>Public Defenders</b>				
• Total cases	34,713	36,599	37,760	40,763
• Rate of change	92.00%	5.40%	3.20%	8.00%
• Total expenditures	\$ 6,532,120	\$ 7,538,471	\$ 7,887,259	\$ 8,751,247
• Rate of change	44.60%	15.40%	4.60%	11.00%
• Average case cost	\$ 188	\$ 206	\$ 209	\$ 215

\* The Contract Attorney Program began as a pilot project in FY 1993.

A comparison of the General Fund appropriations for FY 1994 - FY 1997 for the Indigent Defense Program and the State Public Defender's Office is shown below:

	Actual FY 1994	Actual FY 1995	Estimated FY 1996	Estimated FY 1997
<b>Indigent Defense Program</b>				
Original Appropriation	\$ 8,778,665	\$ 10,029,000	\$ 11,751,800	\$ 17,475,074
Supplemental Appropriation	\$ 0	\$ 3,800,000	\$ 6,400,000	\$ 0
Net Appropriation	\$ 8,778,665	\$ 13,829,000	\$ 18,151,800	\$ 17,475,074
Rate of Change	3.95%	57.53%	31.26%	-3.73%
<b>State Public Defender's Office</b>				
Rate of Change	11.37%	3.98%	12.56%	16.46%
<b>FTE Positions</b>	141.99	142.54	160.30	189.00
Rate of Change	2.36%	0.39%	12.46%	17.90%

In FY 1996, the State Public Defender's Office received a Code of Iowa, Section 8.39 transfer of \$300,000 to cover the cost of handling more indigent defense cases than anticipated. Of the transferred funds, \$200,000 was from the Indigent Defense Program as it is more cost effective to have the State Public Defender's Office handle the additional cases than to assign the cases to private attorneys paid from the Indigent Defense Program. These figures may change before FY 1996 is finalized.

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